

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ALLSTATE INSURANCE COMPANY,

Plaintiff,

v.

TOWNE OR COUNTRY REAL ESTATE,  
INC., a Washington corporation; JED W.  
WHITLEY and DEBORAH K. WHITLEY,  
husband and wife, and the marital community  
composed thereof; and TI FOLTZ, individually  
and on behalf of the marital community,

Defendants.

No. 2:17-cv-01256

COMPLAINT FOR DECLARATORY  
JUDGMENT

Plaintiff Allstate Insurance Company, by and through its attorneys of record,  
Keller Rohrback L.L.P., for its complaint for declaratory judgment, alleges as follows:

**I. PARTIES**

1. Plaintiff Allstate Insurance Company ("Allstate") is an Illinois corporation,  
domiciled in and with its principal place of business in the state of Illinois.

2. Defendants Jed W. Whitley and Deborah K. Whitley, at all times relevant hereto,  
were and are, upon information and belief, husband and wife and residents of Snohomish County,  
Washington.

1           3. Defendant Towne or Country Real Estate, Inc. (“Towne or Country”) at all times  
2 relevant were and is, upon information and belief, a corporation that does business in Snohomish  
3 County, Washington.

4           4. Defendant Ti Foltz, individually and on behalf of the marital community, is upon  
5 information and belief, a real estate agent employed by Towne or Country.  
6

## 7                                   **II. JURISDICTION AND VENUE**

8           5. This is an action over which this Court has original jurisdiction under 28 U.S.C.  
9 §1332 because it is a civil action between citizens of different states and the matter in controversy  
10 exceeds \$75,000, exclusive of interest and costs.

11           6. Venue is correct in this Court pursuant to 28 U.S. C. §1391(a)(1) because one or  
12 more of the defendants reside in this judicial district and 28 U.S.C. §1391(a)(2) because a  
13 substantial part of the events or omissions giving rise to this claim occurred in this district and a  
14 substantial portion of the transactions leading up to the insurance contract at issue occurred in this  
15 district.  
16

## 17                                   **III. FACTS**

18           7. Allstate issued a Business Owners Policy, No. 648610242, to Towne or Country  
19 for the policy period April 30, 2016 to April 30, 2017 (hereinafter the “Policy”). A true and correct,  
20 certified copy of the Policy is attached hereto as **Exhibit A**.

21           8. On or about May 17, 2017, a lawsuit was filed by Jed and Deborah Whitley against  
22 defendants Towne or Country and Ti Foltz, and others, alleging claims for violations of the  
23 Racketeer Influenced and Corrupt Organizations Act (“RICO”) §§ 1962(c) and (d), violations of  
24 the Federal Aiding and Abetting, Title U.S.C. § 2(a) and (b), Federal Bankruptcy Fraud, title 18  
25 U.S.C. §§151, 152, 157A, Federal Mail Fraud, Title 18 U.S.C. § 1341, 1342, and Federal  
26

1 Extortion, Title 18 U.S.C. §1951 (“*Whitley* lawsuit”) . A true and correct copy of the Complaint  
 2 in the *Whitley* lawsuit is attached hereto as **Exhibit B**.

3 9. Defendants Towne or Country and Ti Foltz tendered defense of the *Whitley* lawsuit  
 4 to Allstate under the Policy. Allstate is providing a defense for defendants Towne or Country and  
 5 Ti Foltz with respect to the *Whitley* lawsuit under a full reservation of all rights and defenses.  
 6

#### 7 **IV. CLAIM FOR DECLARATORY RELIEF**

8 10. The Policy consists, in relevant part, of a Business Owners Coverage Form with  
 9 Liability and Medical Expenses limits of \$2,000,000 per occurrence. It provides in relevant part:

#### 10 **SECTION II – LIABILITY**

##### 11 **A. Coverages**

##### 12 **1. Business Liability**

13 **a.** We will pay those sums that the insured becomes legally  
 14 obligated to pay as damages because of “bodily injury,”  
 15 “property damage” or “personal and advertising injury” to  
 16 which this insurance applies. We will have the right and  
 17 duty to defend the insured against any “suit” seeking those  
 18 damages. However, we will have no duty to defend the  
 19 insured against any “suit” seeking damages for “bodily  
 20 injury,” “property damage,” or “personal and advertising  
 21 injury” to which this insurance does not apply. We may, at  
 22 our discretion, investigate any “occurrence” or any offense  
 23 and settle any claim or “suit” that may result. . . .

24 **b.** This insurance applies:

25 **(1)** To “bodily injury” or “property damage” only if:

26 **(a)** The “bodily injury” or “property damage” is  
 caused by an “occurrence” that takes place in  
 the “coverage territory;”

**(b)** The “bodily injury” or “property damage”  
 occurs during the policy period; . . .

**(2)** To “personal and advertising injury” caused by an  
 offense arising out of your business, but only if the offense

was committed in the “coverage territory” during the policy period. . . .

**B. Exclusions**

**1. Applicable To Business Liability Coverage**

This insurance does not apply to:

**a. Expected or Intended Injury**

“Bodily Injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

. . .

**p. Personal And Advertising Injury**

“Personal and Advertising Injury”

(1) Caused by or at the direction of the insured with knowledge that the act would violate the rights of another and would inflict “personal and advertising injury.”

. . .

**r. Criminal Acts**

“Personal and advertising injury” arising out of a criminal act committed by or at the direction of the insured

The policy defines who is an insured and other relevant terms as follows:

**C. Who Is An Insured**

**1.** If you are designated in the Declarations as: . . .

**d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. . . .

**2.** Each of the following is also an insured:

**a.** . . . your “employees,” other than either your “executive officers” (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts

within the scope of their employment by you or while performing duties related to the conduct of your business.

**F. Liability and Medical Expenses Definitions**

...

- 3.** “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

...

- 13.** “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

- 14.** “Personal and advertising injury” means injury, including consequential “bodily injury,” arising out of one or more of the following offenses:

- a.** False arrest, detention or imprisonment;
- b.** Malicious prosecution;
- c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d.** Oral or written publication, in any manner, of material that libels or slanders a person or organization or disparages a person’s or organization’s goods, products or services;
- e.** Oral or written publication, in any manner, of material that violates a person’s right of privacy;
- f.** The use of another’s advertising idea in your “advertisement”; or
- g.** Infringing upon another’s copyright, trade dress or slogan in your “advertisement.” . . .

- 17. “Property Damage” means:**

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- 1                   **b.**     Loss of use of tangible property that is not physically  
2                   injured. All such loss of use shall be deemed to occur at the  
3                   time of the “occurrence” that caused it.

4                   ...

- 5                   **18.**     “Suit” means a civil proceeding in which damages because of  
6                   “bodily injury,” “property damage,” or “personal and advertising injury”  
7                   to which this insurance applies are alleged. ..

8                   **V.     CAUSE OF ACTION**

9                   11.     An actual case or controversy exists between Allstate and defendants Towne or  
10                  County and Ti Foltz as to whether there is any coverage for the claims asserted against them in the  
11                  *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to Towne or  
12                  Country. This Court has authority under 28 U.S.C. § 2201 to issue a declaratory judgment in this  
13                  action.

14                 12.     Allstate seeks a declaration that it does not have a duty to provide a defense to  
15                  defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay  
16                  any settlement or judgment that may be entered against them for any of the claims asserted against  
17                  them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to  
18                  Towne or Country because the *Whitley* lawsuit does not allege a claim caused by an occurrence as  
19                  that term is defined in the Allstate policy.

20                 13.     Allstate seeks a declaration that it does not have a duty to provide a defense to  
21                  defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay  
22                  any settlement or judgment that may be entered against them for any of the claims asserted against  
23                  them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to  
24                  Towne or Country because the *Whitley* lawsuit does not allege a claim for bodily injury as that  
25                  term is defined in the Allstate policy.  
26

1           14. Allstate seeks a declaration that it does not have a duty to provide a defense to  
2 defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay  
3 any settlement or judgment that may be entered against them for any of the claims asserted against  
4 them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to  
5 Towne or Country because the *Whitley* lawsuit does not allege a claim for property damage as that  
6 term is defined in the Allstate policy.  
7

8           15. Allstate seeks a declaration that it does not have a duty to provide a defense to  
9 defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay  
10 any settlement or judgment that may be entered against them for any of the claims asserted against  
11 them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to  
12 Towne or Country because the *Whitley* lawsuit does not allege a claim for personal injury or  
13 advertising injury as those terms are defined in the Allstate policy  
14

15           16. Allstate reserves the right to rely on the above and on any and all other applicable  
16 policy provisions in the Allstate Business Owners Policy, No. 648610242 issued to Towne or  
17 Country, including the exclusions outlined above, as the basis for a declaratory judgment that there  
18 is no coverage under the Allstate Policy for the claims made in the *Whitley* lawsuit.  
19

## 20                                   **VI. PRAYER FOR RELIEF**

21           Having stated a claim for declaratory relief against all the defendants, Allstate Insurance  
22 Company requests the Court enter judgment against all defendants as follows:  
23

24           A. That the Court enter a judgment declaring that there is no coverage under Allstate  
25 Business Owners Policy, No. 648610242 issued to Towne or Country for any claims asserted in  
26 or arising out of the *Whitley* lawsuit, and that Allstate has no duty to indemnify defendants Towne

1 or Country or Ti Foltz for any claims asserted in or arising out of the *Whitley* lawsuit, including  
2 but not limited to, paying any settlement or judgment that may be entered in the *Whitley* lawsuit;

3 B. That the Court enter a judgment declaring that because there is no coverage for  
4 defendants Towne or Country and Ti Foltz for any of the claims asserted in or arising out of the  
5 *Whitley* lawsuit under the Allstate Business Owners Policy, No. 648610242, Allstate has no duty  
6 to provide a defense or benefits or coverage of any kind to defendants Towne or Country and Ti  
7 Foltz under that Policy in connection with any claims asserted in or arising out of the *Whitley*  
8 lawsuit, including any claims made, judgment entered, or settlement reached in that lawsuit;  
9

10 C. That Allstate be awarded its costs and attorney fees incurred herein as allowed by  
11 law; and

12 D. For such other and further relief as the Court deems just and equitable under the  
13 circumstances.  
14

15 DATED this 18th day of August, 2017.

16 KELLER ROHRBACK L.L.P.

KELLER ROHRBACK L.L.P.

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